

# Exhibit H

**In The Matter Of:**  
*ISOMEDIA, Inc. v.*  
*SPECTRUM DIRECT, INC.*

---

*HOWARD MOFSHIN*  
*May 18, 2010*

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, SEATTLE

CASE NO. C08-1733

ISOMEDIA, Inc., a Washington  
corporation; ISOMEDIA.COM, LLC, a  
Washington limited liability company,

Plaintiffs,

vs.

SPECTRUM DIRECT, INC., Et AL.,

Defendants.

\_\_\_\_\_/

TELEPHONIC DEPOSITION OF HOWARD MOFSHIN

Tuesday, May 18, 2010

12:00 p.m. to 1:20 p.m.

5100 Town Center Circle  
Boca Raton, Florida

Reported By:  
DEBORAH LAWRENCE, Court Reporter  
Notary Public, State of Florida  
New Wave Depo LLC

1 APPEARANCES:

2 On behalf of the Plaintiffs  
3 DOUGLAS MCKINLEY, ESQUIRE  
4 ROBERT SIEGEL, ESQUIRE  
5 I Justice Law PC  
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7 Seattle, Washington 98165-1317

8 On behalf of the Defendants  
9 DEREK LINKE, ESQUIRE  
10 Newman and Newman  
11 505 Fifth Avenue South, Suite 610  
12 Seattle, Washington 98104

13 On behalf of Prosper Inc.  
14 JORDAN CAMERON, ESQUIRE  
15 Hill Johnson & Schmutz  
16 4844 N. 300 West  
17 #300  
18 Provo, Utah 84604

19 On behalf of Mr. Mofshin & Green Bullion  
20 CATHY LERMAN, ESQUIRE  
21 Green Bullion  
22 2800 Gateway Drive  
23 Pompano Beach, Florida 33069  
24  
25

## I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
HOWARD MOFSHIN				
BY MR. MCKINLEY	4			
BY MR. LINKE		32		
BY MR. MCKINLEY			34	

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1 PROCEEDINGS

2 Deposition taken before DEBORAH LAWRENCE, Court  
3 Reporter and Notary Public in and for the State of Florida  
4 at Large, in the above cause.

5 Thereupon,

6 (HOWARD MOFSHIN)

7 having been duly sworn or affirmed, was examined and  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCKINLEY:

11 Q. Can I ask the witness to state and spell his name  
12 for the record?

13 A. Howard Jonathan Mofshin, H-O-W-A-R-D,  
14 J-O-N-A-T-H-A-N, M-O-F-S-H-I-N.

15 Q. Howard, have you had your deposition taken before  
16 in the past?

17 A. No.

18 Q. The way the process works is I am going to be  
19 asking you a series questions and I need you to answer those  
20 questions honestly.

21 Can you do that for me?

22 A. Yes.

23 Q. If have you trouble hearing me or don't understand  
24 my question I want you to tell me that you didn't hear me or  
25 you don't understand my question. Otherwise, I am going to

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1 assume that you did.

2 Is that okay?

3 A. That is okay.

4 Q. It's important that you respond verbally as  
5 opposed to nodding your head or anything like that because  
6 none of us can see you and the court reporter won't be able  
7 to record that answer.

8 Do you understand you need to respond verbally?

9 A. Yes.

10 Q. Howard, did you ever work for Green Bullion?

11 A. Yes.

12 Q. When did you work for Green Bullion? From what  
13 period of time?

14 A. 2007 through 2009.

15 Q. What was your job at Green Bullion?

16 A. I was the president.

17 Q. What duties did your job entail?

18 A. Pretty much everything.

19 Q. Could you describe what you mean by everything?

20 A. From making sure that the melts went out to the  
21 buyer of the gold bars to interviewing people to be hired  
22 and fired.

23 Q. Why did you leave your job at Green Bullion?

24 A. It was just the right time and right deal for me  
25 to leave at that point.

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1 Q. The right deal, you left for another job?

2 A. I was one of the founders of the company so I had  
3 an opportunity to leave Green Bullion.

4 Q. Can you explain what you mean by an opportunity?

5 A. I had a severance package that I felt was adequate  
6 and the time that I spent there. I felt it was adequate for  
7 me to make a move and leave.

8 Q. So, is it fair to say that they offered you a  
9 severance package in exchange for your leave?

10 A. Sure.

11 Q. Why did they do that? Why do you think they did  
12 that?

13 A. Just internal strife.

14 Q. What was the nature of the strife?

15 A. Just disagreements between my partner and myself.

16 Q. Which partner?

17 A. Jeff Aronson.

18 Q. What were the nature of those disagreements?

19 A. Mainly human resource issues.

20 Q. Can you explain to me the issues that you  
21 disagreed about?

22 A. Who we should be hiring and firing.

23 Q. Why did you disagree?

24 A. Because he felt one way, I felt the other.

25 Q. Which way did he feel and which way did you feel?



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1 MR. LINKE: Objection. It's so vague.

2 BY MR. MCKINLEY:

3 Q. Do you understand my question?

4 A. No.

5 Q. You testified that he felt one way about hiring  
6 people and you felt another way about hiring people. Is  
7 that accurate?

8 A. Yes.

9 Q. Can you explain the difference in your feelings  
10 about hiring people?

11 A. Just different recruiters we should use, the type  
12 of pedigree we should be hiring. So on. That's it.

13 Q. What type of pedigree were you interested in  
14 hiring?

15 A. I was interested in hiring people that were not as  
16 corporate that can understand the growth of an  
17 entrepreneurial type of environment?

18 Q. What type of people is Mr. Aronson interested in  
19 hiring?

20 A. Just much more corporate and white shoes and white  
21 gloves. Major, you know, household name type companies.

22 Q. What was he hiring those companies for?

23 MR. LINKE: Objection. Misstates testimony.

24 BY MR. MCKINLEY:

25 Q. I understood you to say that Mr. Aronson was

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1 interested in hiring white shoes and white glove companies.

2 Is that not accurate?

3 A. Individuals from white shoe, white glove  
4 companies.

5 Q. I see. You were interested in hiring people from  
6 what kind of companies?

7 A. More entrepreneurial earlier stage companies that  
8 had the ability to wear more hats than be tunnel-visioned in  
9 one type of job responsibility.

10 Q. What were you hiring these individuals for?

11 A. Again, anything from human resources to back room  
12 melt to people that weighed and analyzed gold contents to  
13 marketing to cleaning the facility.

14 Q. Can you walk me through Green Bullion's corporate  
15 ownership structure during the time you were there?

16 A. Well, first started out as 80/20 relationship  
17 between Jeff and I.

18 Q. Who owned 80 and who owned 20?

19 A. Jeff Aronson owned 80, Howard Mofshin owned 20.

20 Q. It was a stand-alone entity that was owned solely  
21 by you and Jeff?

22 A. Correct. Then.

23 Q. What time period was that?

24 A. '07 when I started.

25 Q. Did that change?

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1 A. Yes.

2 Q. When?

3 A. I believe it was the end of '07 or beginning of  
4 '08.

5 Q. What changed?

6 A. General Catalyst and Highland Capital, two private  
7 equity companies bought into the company.

8 Q. How did that change the structure?

9 A. They bought 20 percent of the company equal pro  
10 rata from both Jeff and I.

11 Q. Was there a proposed change in the future?

12 A. Yes, Mangrove Capital out of Luxembourg bought, I  
13 don't remember what they bought. Seven percent, 15 percent.  
14 I think it was six, seven percent pro rata from Jeff and I.

15 Q. When was that?

16 A. That was summer of '09, I believe.

17 Q. Tell me about your commercial e-mail marketing  
18 practices? Were you responsible for commercial e-mail  
19 practices at Green Bullion?

20 A. No.

21 Q. Who was responsible?

22 A. The networks that we used.

23 Q. Who was responsible for hiring those networks?

24 A. Marketing department.

25 Q. Who was responsible for the marketing department?

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1 A. David Knight.

2 Q. Did you have anything to do with hiring the firms  
3 who did your electronic mail marketing?

4 A. I signed off on it as president.

5 Q. Did you have anything to do with choosing who was  
6 hired to do it?

7 A. Sorry, I am not understanding your question.

8 Q. Who was hired to do your commercial electronic  
9 mail marketing?

10 A. David Knight. Excuse me, it was Scott Kaufman.

11 Q. Who did Scott Kaufman hire to do it on your  
12 behalf?

13 A. You mean the companies?

14 Q. Yes.

15 A. Hydra Media, Frontline, Q Interactive. I don't  
16 remember the other ones.

17 Q. Whose decision was it to hire those companies?

18 A. Scott Kaufman.

19 Q. Did Scott Kaufman have the authority to hire those  
20 companies on his own?

21 A. He had the authority to get to the finish line.  
22 Then for me to sign off.

23 Q. Is Scott Kaufman still with the company?

24 A. No, he is not.

25 Q. Do you know when he left?

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1 A. Within the last couple of weeks, I think. I'm not  
2 sure. Within the last couple of weeks.

3 Q. Do you know why he left?

4 A. Take a better opportunity I think salary wise.

5 Q. I see. Were you in charge of any of the policies  
6 or procedures that Scott Kaufman used when choosing to hire  
7 which company to do your commercial e-mail marketing?

8 A. Not directly. I mean, I was in charge of  
9 everything but not directly that.

10 Q. What were the policies and procedures that were to  
11 be used?

12 A. Basically that we had to use e-mail marketing,  
13 banner advertising. That the companies that got leads for  
14 us only were to get leads through e-mail marketing, banner  
15 advertising or paid search and that they should have about  
16 35 percent ratio of people that order those leads convert to  
17 packaging coming into the door.

18 Q. Was there any requirement that those companies  
19 that did commercial electronic mail marketing for you comply  
20 with any laws or statutes?

21 A. Anyone we hired was supposed to have their own  
22 in-house technology to comply with any laws that should have  
23 been complied with due e-mail marketing and as such from the  
24 other marketing that we did.

25 Q. What did you do to determine whether or not they

1 had their in-house policies to do so?

2 A. We asked other people in the industry and at trade  
3 shows.

4 Q. Who did you ask?

5 A. Other vendors that were in the industry.

6 Q. What did you ask them specifically?

7 A. Are these guys good guys. You know. It was more  
8 about producing leads and the fact that they would have the  
9 ability to make sure that the leads that they gave to us  
10 were quality leads both on conversion and on compliance with  
11 the law.

12 Q. I am confused. Were you concerned about whether  
13 or not they complied with the law?

14 MR. LINKE: Objection. Ambiguous as to  
15 concerned.

16 BY MR. MCKINLEY:

17 Q. Do you understand what the word concerned means,  
18 Howard?

19 A. Yes.

20 Q. Were you concerned about whether or not the people  
21 you hired to send commercial e-mails for you complied with  
22 the law?

23 A. Yes.

24 Q. Did you do anything to look into their reputation  
25 for complying with the law before you hired them?

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1       A.    I thought I answered that by saying we asked other  
2 people in the industry if they were "good citizens of their  
3 space."

4       Q.    Did you undertake any investigation online?

5       A.    Yeah, we looked online to see if there were any  
6 issues. I don't recall what we saw. It must have been okay  
7 or we wouldn't have used them.

8       Q.    Would you have perhaps done a Google search on  
9 their name?

10      A.    You know what? I don't recall. Sorry, it was a  
11 long time ago.

12      Q.    Are you familiar with Spam House?

13      A.    No.

14      Q.    Are you familiar with the Roscoe list?

15      A.    No, the only Roscoe I remember was from Dukes of  
16 Hazard.

17      Q.    Are you familiar with any organization that tracks  
18 spammers?

19      A.    I mean, I know they are out there. I don't know  
20 their names.

21      Q.    Did you use any of those organizations as a  
22 research when you were conducting your due diligence to see  
23 if the people you were hiring to send commercial e-mails  
24 complied with the law?

25      A.    You know, Scott Kaufman could better answer that.

1 I would assume he did.

2 Q. Walk me through the process that took place at  
3 your company when one of the companies you hired to send  
4 commercial e-mails sent out an advertising campaign?

5 A. We would have creative either done by our in-house  
6 creative department or by whichever house, for lack of a  
7 better word, was sending the e-mail out to their list of  
8 clients. I guess it was or affiliate. As long as the  
9 creative met our internal rules which were it couldn't say  
10 certain things or couldn't have any type of inference that  
11 we were the highest paid -- we paid the highest prices.  
12 Anything that wasn't exactly what our terms and conditions  
13 stated. Once that met all those objectives we would then  
14 send the creative or approve the creative that was sent to  
15 us from the house and they would then do what they do to get  
16 leads for us.

17 Q. Did you ever review any of the e-mails that were  
18 sent out on your behalf?

19 A. Yes.

20 Q. Did you do that as a matter of course?

21 A. No, I did it as a matter of, you know, spot  
22 checking.

23 Q. How often would you check the e-mails?

24 A. Once every couple weeks.

25 Q. What would you look for when you checked the



1 e-mails?

2 A. Exactly what I just stated.

3 Q. Would you look at the subject line on the e-mail?

4 A. No.

5 Q. Would you look at the front line on the e-mail?

6 A. I would just look at the creative artistic  
7 verbiage on the actual e-mail when it was opened.

8 Q. Could you answer my question? Did you look at the  
9 front line on the e-mail?

10 A. No.

11 Q. Did you look at any of the header information on  
12 the e-mail?

13 A. No.

14 Q. Did you inspect any of the information --

15 A. -- that job was supposed to be done by whoever the  
16 house was sending out the e-mail.

17 Q. Did you ever receive any complaints from anyone  
18 about the e-mails that were sent on your behalf?

19 A. Yes.

20 Q. How often did you receive those complaints?

21 A. I don't recall how often but we did receive  
22 complaints.

23 Q. What did you do as a result of those complaints?

24 A. We sent it to Hydra, as an example, and said if  
25 this person is not interested in sending in a package please

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1 take them off the list.

2 Q. Did anyone ever complain about compliance with the  
3 law when they complained about the e-mail?

4 A. Not that I recall.

5 Q. Did you ever review any of the e-mails as a result  
6 any of the complaint?

7 A. Yes.

8 Q. Did you ever review the headers of the e-mails as  
9 a result any of the complaints?

10 A. Not that I recall.

11 Q. Did you ever look into Hydra's practice as a  
12 result of any complaint?

13 A. Yes.

14 Q. What happened when you looked into their  
15 practices?

16 A. We saw that they were not just sending e-mails and  
17 banner ads and paid search. That they were using  
18 pre-populated data and surveys and other non-contractual  
19 type of leads that we asked them to get us.

20 Q. Did you consider that behavior unethical?

21 A. Any time someone goes above and beyond a  
22 contractual agreement to me it's unethical.

23 Q. What did you do as a result of that behavior?

24 A. We notified them that we were not going to pay for  
25 these leads or any leads going forward until they changed

1 their behavior and that the conversion rate on the e-mails  
2 matched with the general rule of thumb was that about 35  
3 percent of all e-mails should convert into packages.

4 Q. Did the fact they were behaving in a manner that  
5 was unethical cause you any concern about whether they were  
6 complying with the law in other regards?

7 A. It wasn't what I was thinking about.

8 Q. So, the fact that they were behaving in a manner  
9 you thought was unethical didn't cause you any concern about  
10 whether or not they were complying with other laws?

11 A. It caused me concern but they had always assured  
12 us that they were always compliant with the laws required  
13 for e-mailing any of the other types of marketing they were  
14 doing for us.

15 Q. Had they also assured you they were not using  
16 surveying and other techniques you described as unethical?

17 A. Yes, that is why we told them we were no longer  
18 interested in doing business with them at the end of the  
19 December '08 and have not paid them ever since then for the  
20 months after they did it for us because we told them we  
21 didn't want to do business with them.

22 Q. When did you first learn of that behavior on your  
23 part?

24 MR. LINKE: Objection. Vague as to this  
25 behavior.

1 BY MR. MCKINLEY:

2 Q. When did you first learn of what you considered to  
3 be unethical behavior on their part?

4 A. Toward the end of December of '08.

5 Q. Can I have GB009993 marked as plaintiff's one?  
6 Howard, are you looking at what's been marked as plaintiff's  
7 number one?

8 A. Yes.

9 Q. Can you tell me what it is?

10 A. It looks like an e-mail that I -- hold on. Looks  
11 like something I must have sent to Chris Pink saying that  
12 they should not be sending this lady an e-mail anymore.

13 (Plaintiff's Exhibit No. 1 was marked for  
14 identification.)

15 BY MR. MCKINLEY:

16 Q. What's the date on that e-mail?

17 A. The date is February '09.

18 Q. So, my understanding is you believed these guys at  
19 Hydra were acting in a way that was unethical in December of  
20 '08.

21 Were you still doing business with them when this  
22 was sent?

23 A. No, what happened was we stopped paying them.  
24 They agreed to send e-mails for free if we -- if their  
25 conversion went back into line then we pay them. If not, we

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1 wouldn't pay them for anything. They were just sending out  
2 free stuff for us.

3 Q. How long did they send out free stuff for you?

4 A. From January or February '09 until we stopped  
5 completely which was in April.

6 Q. For a period of four months they were sending  
7 commercial electronic mail on your behalf for no  
8 compensation?

9 A. No, that is two months from February to April.

10 Q. Did they send commercial e-mail between December  
11 '08 --

12 A. -- and February '09.

13 Q. From the period beginning December '08 until the  
14 end of February '09 did Hydra continue to send commercial  
15 electronic e-mail messages on your behalf?

16 A. We told them we were unhappy and that we did not  
17 want to pay for the stuff at some time the end of December,  
18 end of January. I don't recall the exact date. Then for a  
19 period of a couple months after that they tried to do tests  
20 to make sure that it met the conversion rate and they were  
21 not fraudulent bad data leads.

22 Q. I am just asking for a yes or no?

23 A. No.

24 Q. From the period December '08 until the end of  
25 February '09, the date of that e-mail, did they send

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1 e-mails, commercial electronic mail messages on behalf of  
2 Green Bullion?

3 Did Hydra send those?

4 A. On behalf means to me that we were in contract to  
5 pay them for those. So, I would say no. If you asked if  
6 they sent them, yes.

7 Q. Did they invoice you for e-mails sent during that  
8 period?

9 A. Yes.

10 Q. Mark exhibit two. Howard, take a minute to review  
11 what looks to be an e-mail chain there.

12 A. Got it.

13 Q. Howard, can you tell me what you're looking at?

14 A. I am looking at -- looks like we caught Hydra  
15 sending out some type of blast e-mail to people that were  
16 not requesting it. So, what we call these is pre-populated  
17 data e-mails where it looks like it was sent as e-mail but  
18 it actually was never sent as e-mail. Then they sent us  
19 confirmation saying the person requested the data but it was  
20 just someone's data already populated into a lead which was  
21 pre-populated data.

22 (Plaintiff's Exhibit No. 2 was marked for  
23 identification.)

24 BY MR. MCKINLEY:

25 Q. There is a line in the e-mail that says it was

1 sent from michael@utown.com to Marion Aronson --

2 A. -- yes.

3 Q. Let me finish. It says Tim, it appears some sort  
4 of web bot or affiliate from Hydra is spamming our request  
5 kit forms.

6 Do you know what that means?

7 A. A web bot would be pre-populated data. I guess  
8 spamming would just be sending it out in a blast version.

9 Q. Can you review exhibit three for me, Howard?

10 A. I got it.

11 Q. Can you describe what is marked as exhibit three?

12 A. My partner is saying these guys keep giving us  
13 non-converting leads and that if they are going to continue  
14 to do this. We are going to continue to not pay them and we  
15 are going to look for new vendors.

16 (Plaintiff's Exhibit No. 3 was marked for  
17 identification.)

18 BY MR. MCKINLEY:

19 Q. Where does it say he is not going to pay them?

20 A. I just know what he is saying here. It says this  
21 is really bad and in no way will you be responsible for any  
22 leads from the publisher. I will I you a report of bad  
23 leads and they will be credited to your account. To me that  
24 means he is not going to pay for them.

25 Q. My understanding is that message is from Chris

1 Pink?

2 A. That is. So, but there must have been another  
3 e-mail or Chris Pink must know he's giving us fraudulent  
4 leads and we are not going to pay for them.

5 Q. Were you paying for non-fraudulent leads at that  
6 time?

7 A. No, we were not paying for any leads at that time  
8 but we were in a dispute with them if we were going to. We  
9 were saying we were not going to and they were saying that  
10 we were going to pay for the past monies. We had not come  
11 to a conclusion. Our conclusion was we were not paying  
12 them. Their conclusion was they thought they were going to  
13 work something out with us.

14 Q. Can you read the message below that from Jeanette  
15 to Chris?

16 A. Yeah.

17 Q. She says Hydra needs to control their publisher.  
18 It sounds to me like she is consenting to the e-mail that is  
19 being sent out and she just wants them to do a better job of  
20 it.

21 Is that accurate?

22 A. She was a lower level individual in marketing and  
23 had no idea of the monetary commitments or understanding  
24 between the executive level and Hydra or anyone else.

25 Q. Why was she communicating with Chris?



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1 A. Because you think Jeff and I sat around all day  
2 looking at e-mail or we had people doing it for us?

3 Q. Did she have authority to speak for your company  
4 or not.

5 A. Yes.

6 Q. Again, she seems to be consenting to them sending  
7 e-mail as long as they do so in a way that is compliant.

8 Do you think that is a fair reading of her e-mail  
9 message there?

10 A. Yes.

11 Q. Take a look at plaintiff's four, Howard.

12 A. I got it.

13 Q. Can you tell me what is -- describe what's marked  
14 as plaintiff's exhibit number four?

15 A. It looks like Chris Pink is saying to us Michael  
16 is doing this well enough. Then I had sent something to him  
17 saying this needs to get removed from the e-mail list ASAP.  
18 Then Pete from Yahoo is saying it doesn't sound like that is  
19 happening and that someone is blowing smoke up his ass.

20 (Plaintiff's Exhibit No. 4 was marked for  
21 identification.)

22 BY MR. MCKINLEY:

23 Q. What's the date on Pete's e-mail?

24 A. January 1, '09.

25 Q. How quickly would you try and get someone

1 un-subscribed from your list?

2 A. ASAP.

3 Q. How long did it take in this case?

4 A. It looks like it took a month. You know what?  
5 The problem is that other people could be e-mailing the same  
6 guy our offer.

7 Q. How would that work?

8 A. Well, let's say Hydra had 50 affiliates e-mailing  
9 our offer. They could be e-mailing the same guy.

10 Q. What would happen if he un-subscribed from one of  
11 those affiliates?

12 MR. LINKE: Objection. Calls for speculation.

13 BY MR. MCKINLEY:

14 Q. You can answer the question, Howard, if you  
15 understand it?

16 A. I don't understand it.

17 MR. MCKINLEY: Well, can we read back the prior  
18 answer?

19 (A portion of the record was read by the  
20 reporter.)

21 BY MR. MCKINLEY:

22 Q. Howard, could you explain to us what you mean by  
23 the problem in that prior answer?

24 A. The problem is if a guy got an e-mail that had he  
25 shouldn't have gotten that doesn't make me happy.

1 Q. What did you mean by the other affiliates though?

2 A. From what I understand, let's say Hydra is the  
3 company that we are contracted with. That they have other  
4 people that are contracted with them that e-mails someone's  
5 offer out. So, if they have a number of people e-mailing  
6 our offer I am guessing that one person's name could be on  
7 several lists.

8 Q. Why would that matter?

9 A. Because then you would be getting e-mail --  
10 getting e-mail that he asked not to get a couple weeks later  
11 from a different affiliate that is on mailing the list.

12 Q. Why wouldn't there be a coordinated effort to  
13 remove him from everyone's list?

14 A. I don't know.

15 MR. LINKE: Objection. Calls for speculation.

16 Calls for information beyond the knowledge.

17 BY MR. MCKINLEY:

18 Q. Do you have an answer, Howard?

19 A. You need to ask Hydra that. Hydra was responsible  
20 for making sure that stuff was smooth.

21 Q. Who is Scott Kaufman?

22 A. He is a 40 year old gentleman that worked for Cash  
23 for Gold. Weighs about 250 pounds. Balding blonde hair.

24 Q. What did he do for Cash for Gold?

25 A. He was our head of e-mail marketing.

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1 Q. Can we mark five?

2 MR. LINKE: Can we go off the record to discuss  
3 something related to your recent line of questioning?  
4 It might clarify things a little bit.

5 MR. MCKINLEY: Sure.

6 (Discussion was held off the record.)

7 BY MR. MCKINLEY:

8 Q. Howard, have you reviewed plaintiff's five?

9 A. No, I haven't got it.

10 Q. Can you describe what's marked as plaintiff's  
11 five?

12 A. Just Scott Kaufman letting some of the people in  
13 marketing know about the different e-mail vendors or houses,  
14 what their strengths and weaknesses are.

15 (Plaintiff's Exhibit No. 5 was marked for  
16 identification.)

17 BY MR. MCKINLEY:

18 Q. Can I draw your attention to the one called Encore  
19 Ads?

20 A. I got it.

21 Q. Can you read that for me?

22 A. Their ex-Hydra guys seem to know the ins and outs  
23 of the industry including the tricks and know there are some  
24 shadiness at Hydra. They focus on getting Hot Mail and  
25 Yahoo e-mailed into the in box and have four partners that

1 they work with who are experts and one is an AOL expert.  
2 There have 15 million live active e-mail addresses between  
3 the data they own and the lists they manage. All e-mails  
4 are opt in and have no complaints. Recommends that we use  
5 strict sub ID policies and that we don't use Click Booth.  
6 These guys seem sketchy but they may be able to produce but  
7 we have to watch them like a hawk.

8 Q. Did you hire Encore Ads?

9 A. I don't know.

10 Q. Do you know what he meant by the shadiness at  
11 Hydra?

12 A. Yeah, meaning that they tell you they are going to  
13 get you quality leads but that should convert at 35 percent  
14 but they converted five, six percent.

15 Q. What was the date on this e-mail?

16 A. Hold on. September 22, '09.

17 Q. Did you do anything in September of '09 as a  
18 result of his report that Hydra was shady?

19 A. Yes, I stopped paying them in December '08.

20 Q. Did you pay them in September?

21 A. I don't recall.

22 Q. Did you pay them in October?

23 A. This is '09; right?

24 Q. Yes. Did you pay them September '09?

25 A. No.

1 Q. Did you pay them in October '09?

2 A. No.

3 Q. Did you pay them in November '09?

4 A. No.

5 Q. Skip ahead to plaintiff's six. Can you tell me  
6 what this is?

7 A. It's a customer balance detail.

8 (Plaintiff's Exhibit No. 6 was marked for  
9 identification.)

10 BY MR. MCKINLEY:

11 Q. Do you know what customer it's for?

12 A. Hydra.

13 Q. What does this document show me?

14 A. It shows me that we stopped paying them in '08.

15 Q. Does it show payments throughout '08?

16 A. Yes.

17 Q. Looks to me like you were paying these guys a lot  
18 of money. Do you agree?

19 A. Yes.

20 Q. So, for example, it starts on September '07  
21 invoiced you for \$13,320 and you paid that 15 days later.

22 Is that accurate?

23 A. That is accurate.

24 Q. Next invoice is for \$44,000 and you paid that?

25 A. Yes.

1 Q. They were generating a lot of revenue for you  
2 during that time period, I take it. Is that true?

3 A. Yes.

4 Q. You were paying them quite a bit of money for  
5 generating that revenue. Is that true?

6 A. Yes.

7 MR. MCKINLEY: Let's take 15 minutes.

8 (Brief recess was taken.)

9 BY MR. MCKINLEY:

10 Q. Circle back around. When did you first figure out  
11 that Hydra was acting in a way you considered unethical?

12 A. I would say some time in December '08.

13 Q. For how long after December '08 did Hydra continue  
14 to generate leads for Green Bullion?

15 A. About four, five months.

16 Q. When they generated good leads did you continue to  
17 convert that into a transaction?

18 A. Yes, I believe so.

19 Q. So, for a period of about four months they were  
20 sending out commercial e-mails. This would be January '09  
21 to April '09.

22 For a period about four months you had decided  
23 their business practices were unethical because they had  
24 sent spam or whatever?

25 MR. LINKE: Objection.

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1 THE WITNESS: No, no, no.

2 MR. LINKE: Mischaracterization of the witness's  
3 testimony.

4 THE WITNESS: That is not why I thought they were  
5 unethical.

6 BY MR. MCKINLEY:

7 Q. Why did you think they were unethical?

8 A. Because their conversion rates went from 35  
9 percent to five, six percent.

10 Q. Why did they go from 35 to five, six percent?

11 A. I don't know. That is why I thought they were  
12 unethical.

13 Q. I also want to circle back about their sending  
14 commercial e-mails. Is there someone at Green Bullion today  
15 who has knowledge of Green Bullion's commercial electronic  
16 e-mail practices and procedures other than you, Howard?

17 MR. LINKE: Objection. Vague. Time period?

18 BY MR. MCKINLEY:

19 Q. During the time period that you worked there.  
20 Rephrase the question. During the time period that you  
21 worked for Green Bullion was there anyone at the company who  
22 had a better understanding of e-mail practices? Repeat my  
23 question, then you can answer.

24 During the period that you worked at Green Bullion  
25 was there anyone at the company with a better understanding



1 of your commercial e-mail practices and procedures than you?

2 A. Shawn Kernes.

3 Q. Spell that for me?

4 A. S-H-A-W-N, K-E-R-N-E-S.

5 Q. Does Shawn Kernes continue to work for Green  
6 Bullion? Do you know?

7 A. Yes.

8 Q. He still works for Green Bullion?

9 A. Yes.

10 Q. Do you know if Shawn Kernes reviews the e-mails  
11 that are sent on Green Bullion's behalf?

12 A. I don't know.

13 Q. Do you know if Shawn Kernes reviews the header  
14 information in the e-mails that are sent on Green Bullion's  
15 behalf?

16 A. I don't know.

17 Q. Do you know if Shawn Kernes did any background  
18 checks on any of your affiliates?

19 A. Not sure.

20 Q. Who sent e-mails on your behalf?

21 A. Not sure.

22 Q. Do you know if Shawn has personal knowledge of  
23 whether any of the affiliates who sent commercial e-mails on  
24 Green Bullion's behalf comply with any statutes or laws?

25 A. I would believe that he would because he is our

1 chief technology officer and would make sure that anybody  
2 that does e-mailing for us is considered compliant in those  
3 aspects.

4 Q. Does that mean he would know about their  
5 reputation or their actual practices?

6 A. Not sure.

7 Q. You're not sure if he would know about their  
8 reputation?

9 A. Not sure of either question you asked me.

10 MR. MCKINLEY: Can we go off the record?

11 (Discussion was held off the record.)

12 CROSS EXAMINATION

13 BY MR. LINKE:

14 Q. Mr. Mofshin, earlier you testified that Green  
15 Bullion had an employee named Scott Kaufman. Do you recall  
16 that?

17 A. Yes, sir.

18 Q. Were you involved in Mr. Kaufman's hiring while  
19 you were at Green Bullion?

20 A. Yes.

21 Q. Do you know approximately when Mr. Kaufman was  
22 hired?

23 A. I don't recall but it was some time I believe in  
24 '09.

25 Q. Can you give me your best guess as to whether is

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1 was early, mid --

2 MR. MCKINLEY: -- objection. Calls for  
3 speculation.

4 MR. LINKE: Asking for an estimate.

5 MR. MCKINLEY: You're asking the witness to  
6 speculate. I object. Calls for speculation.

7 MR. LINKE: He just testified he has personal  
8 knowledge as to when he was hired.

9 MR. MCKINLEY: He testified he doesn't remember.  
10 You asked him to speculate. Objection. Calls for  
11 speculation.

12 MR. LINKE: I am entitled to his answer on the  
13 record.

14 THE WITNESS: I believe it was February '09.

15 MR. LINKE: Thank you. I am done.

16 REDIRECT EXAMINATION

17 BY MR. MCKINLEY:

18 Q. Howard, when did you found Green Bullion?

19 A. Green Bullion was founded some time in late '08.  
20 Cash for Gold was founded earlier. I am not sure which one  
21 you're asking for.

22 Q. Start with Cash for Gold. When did you found Cash  
23 for Gold?

24 A. Cash for Gold was found in April or May '07.

25 Q. At the start of the company who was in charge of

1 e-mail marketing relationship?

2 A. Jeff Aronson and myself.

3 Q. At that time period -- during that time period  
4 were you the person most knowledgeable about your policies  
5 and procedures related to commercial e-mails?

6 A. Yes.

7 Q. How long did you remain the person most  
8 knowledgeable about those policies and procedures?

9 A. First question is yes. Second question is for  
10 about four, five months.

11 Q. Until what date?

12 A. I don't recall.

13 MR. MCKINLEY: Did we get the insertion order  
14 back and some other stuff copied? Go off the record.

15 (Discussion was held off the record.)

16 BY MR. MCKINLEY:

17 Q. Mark the five page insertion order as plaintiff's  
18 seven. Howard, are you looking at what's been marked as  
19 plaintiff's seven?

20 A. Yes.

21 Q. Can you tell me what it is?

22 A. Insertion order.

23 (Plaintiff's Exhibit No. 7 was marked for  
24 identification.)

25 BY MR. MCKINLEY:

1 Q. Who are the parties to the insertion order?

2 A. Myself and Chris Pink.

3 Q. Actually, you and Chris Pink were the ones that  
4 signed it. The party would be your company.

5 A. Okay. Yes. Cash for Gold LLC and Green Bullion.

6 Q. Is Hydra a party to this insertion order?

7 A. Yes.

8 Q. What day was this insertion order signed?

9 A. It looks like either 10 or 12-28-08. I think  
10 10-28-08.

11 Q. At that time who was the person most knowledgeable  
12 about your company, about your e-mailing practices and  
13 procedures?

14 A. Michael Sheronberg (phonetic.)

15 Q. Do you know where Michael Sheronberg works now?

16 A. No.

17 Q. Do you know if he still works for Cash or Gold?

18 A. He does not.

19 MR. MCKINLEY: That's all I have.

20 (Witness was excused.)

21 (Deposition was concluded at 1:20 p.m.)  
22  
23  
24  
25

**CERTIFICATE**

**STATE OF FLORIDA**

**COUNTY OF PALM BEACH**

I hereby certify that I have read the foregoing deposition by me, given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this 27th of May, 2010.

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**HOWARD MOFSHIN**

1 ERRATA SHEET

2 IN RE: Isomedia v. Spectrum

3 DEPOSITION OF: HOWARD MOFSHIN

4 TAKEN: May 18, 2010

5  
6 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

7 PAGE # LINE # CHANGE REASON

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18 Please forward the original signed errata sheet to  
19 this office so that copies may be distributed to all  
20 parties.

21 Under penalty of perjury, I declare that I have  
22 read my deposition and that it true and correct subject  
23 to any changes in form or substance entered here.

24 Date: \_\_\_\_\_

25 SIGNATURE OF DEPONENT: \_\_\_\_\_

CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, the undersigned authority, certify that  
HOWARD MOFSHIN personally appeared before me and was duly  
sworn on the 18th of May, 2010.

Witness my hand and official seal this  
27th of May, 2010.



DEBORAH LAWRENCE  
Notary Public, State of Florida  
My Commission Expires: 4/2/2012  
My Commission No: DD768644



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CERTIFICATE

THE STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, DEBORAH LAWRENCE, Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

DATED this 27th of May, 2010.

  
\_\_\_\_\_  
DEBORAH LAWRENCE, Court Reporter

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<b>techniques (1)</b> 17:16 <b>technology (2)</b> 11:22;32: 1 <b>terms (1)</b> 14:12 <b>testified (5)</b> 4: 8;7: 5;32:14;33: 7, 9 <b>testimony (2)</b> 7:23;30: 3 <b>tests (1)</b> 19:19 <b>Thereupon (1)</b> 4: 5 <b>thinking (1)</b> 17: 7 <b>though (1)</b> 25: 1 <b>thought (5)</b> 13: 1;17: 9;22:12; 30: 4,11 <b>three (2)</b> 21: 9,11	<b>U</b>  <b>understood (1)</b> 7:25 <b>undertake (1)</b> 13: 4 <b>unethical (12)</b> 16:20,22;17: 5, 9,16; 18: 3,19;29:11,23;30: 5, 7,12 <b>unhappy (1)</b> 19:16 <b>un-subscribed (2)</b> 24: 1,10 <b>up (1)</b> 23:19 <b>use (5)</b> 7:11;11:12;13:21; 27: 4, 5 <b>used (4)</b> 9:22;11: 6,11;13: 7 <b>using (2)</b> 16:17;17:15		



1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF WASHINGTON, SEATTLE

3  
4 Case No: C08-1733

5  
6 ISOMEDIA, Inc., a Washington  
7 Corporation; ISOMEDIA.COM, LLC, a  
8 Washington limited liability company

9 Plaintiffs,

10 V

11 SPECTRUM DIRECT, INC., Et Al.,

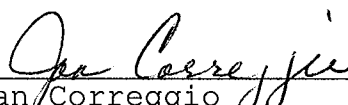
12 Defendants,  
13 \_\_\_\_\_/

14 **AFFIDAVIT OF LOST EXHIBITS**

15 I, Jan Correggio, Notary Public in and for the State of  
16 Florida, Manager of Court Reporting Services, do hereby  
17 certify that the exhibits to the deposition of Howard  
18 Mofshin, numbered 1 through 7, were mailed by the court  
19 reporter on May 27, 2010, have not been received and are  
20 believed to be lost in the mail. Exhibit 7 has been  
21 received from Mr. Siegel and has been attached to the  
22 transcript.

23 FURTHER, that said records will be forwarded to Robert  
24 Siegel and Derek Linke at the time they are received from  
25 the U. S. Postal Service.

26 WITNESS my hand and official seal at Boca Raton, PALM  
27 BEACH, Florida, this June 10, 2010.

28  
29   
30 Jan Correggio  
31 Court Reporter and Notary Public  
32 State of Florida at Large  
33 My Commission DD 715994  
34 Expires: September 18, 2011

**In The Matter Of:**  
*ISOMEDIA, Inc. v.*  
*SPECTRUM DIRECT, INC.*

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*HOWARD MOFSHIN*  
*May 18, 2010*

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*New Wave Depo LLC*  
*4400 N. Federal Highway, Suite 210-19*  
*Boca Raton, FL 33431*  
*Phone (561) 368-8587 Toll Free (877) 544-WAVE*  
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Page 0

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, SEATTLE

CASE NO. C08-1733

ISOMEDIA, Inc., a Washington  
corporation; ISOMEDIA.COM, LLC, a  
Washington limited liability company,

Plaintiffs,

vs.

SPECTRUM DIRECT, INC., Et AL.,

Defendants. /

TELEPHONIC DEPOSITION OF HOWARD MOFSHIN

Tuesday, May 18, 2010  
12:00 p.m. to 1:20 p.m.  
5100 Town Center Circle  
Boca Raton, Florida

Reported By:  
DEBORAH LAWRENCE, Court Reporter  
Notary Public, State of Florida  
New Wave Depo LLC

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1 APPEARANCES:

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16 2800 Gateway Drive  
17 Pompano Beach, Florida 33069

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I N D E X

1				
2				
3	WITNESS:	DIRECT	CROSS	REDIRECT
4	HOWARD MOFSHIN			
5	BY MR. MCKINLEY	4		
6	BY MR. LINKE		32	
7	BY MR. MCKINLEY			34
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E X H I B I T S

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1 PROCEEDINGS

2 Deposition taken before DEBORAH LAWRENCE, Court

3 Reporter and Notary Public in and for the State of Florida

4 at Large, in the above cause.

5 Thereupon,

6 (HOWARD MOFSHIN)

7 having been duly sworn or affirmed, was examined and

8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCKINLEY:

11 Q. Can I ask the witness to state and spell his name

12 for the record?

13 A. Howard Jonathan Mofshin, H-O-W-A-R-D,

14 J-O-N-A-T-H-A-N, M-O-F-S-H-I-N.

15 Q. Howard, have you had your deposition taken before

16 in the past?

17 A. No.

18 Q. The way the process works is I am going to be

19 asking you a series questions and I need you to answer those

20 questions honestly.

21 Can you do that for me?

22 A. Yes.

23 Q. If have you trouble hearing me or don't understand

24 my question I want you to tell me that you didn't hear me or

25 you don't understand my question. Otherwise, I am going to

Page 5

1 assume that you did.  
2 Is that okay?  
3 A. That is okay.  
4 Q. It's important that you respond verbally as  
5 opposed to nodding your head or anything like that because  
6 none of us can see you and the court reporter won't be able  
7 to record that answer.  
8 Do you understand you need to respond verbally?  
9 A. Yes.  
10 Q. Howard, did you ever work for Green Bullion?  
11 A. Yes.  
12 Q. When did you work for Green Bullion? From what  
13 period of time?  
14 A. 2007 through 2009.  
15 Q. What was your job at Green Bullion?  
16 A. I was the president.  
17 Q. What duties did your job entail?  
18 A. Pretty much everything.  
19 Q. Could you describe what you mean by everything?  
20 A. From making sure that the melts went out to the  
21 buyer of the gold bars to interviewing people to be hired  
22 and fired.  
23 Q. Why did you leave your job at Green Bullion?  
24 A. It was just the right time and right deal for me  
25 to leave at that point.

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1 Q. The right deal, you left for another job?  
2 A. I was one of the founders of the company so I had  
3 an opportunity to leave Green Bullion.  
4 Q. Can you explain what you mean by an opportunity?  
5 A. I had a severance package that I felt was adequate  
6 and the time that I spent there. I felt it was adequate for  
7 me to make a move and leave.  
8 Q. So, is it fair to say that they offered you a  
9 severance package in exchange for your leave?  
10 A. Sure.  
11 Q. Why did they do that? Why do you think they did  
12 that?  
13 A. Just internal strife.  
14 Q. What was the nature of the strife?  
15 A. Just disagreements between my partner and myself.  
16 Q. Which partner?  
17 A. Jeff Aronson.  
18 Q. What were the nature of those disagreements?  
19 A. Mainly human resource issues.  
20 Q. Can you explain to me the issues that you  
21 disagreed about?  
22 A. Who we should be hiring and firing.  
23 Q. Why did you disagree?  
24 A. Because he felt one way, I felt the other.  
25 Q. Which way did he feel and which way did you feel?

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1 MR. LINKE: Objection. It's so vague.  
2 BY MR. MCKINLEY:  
3 Q. Do you understand my question?  
4 A. No.  
5 Q. You testified that he felt one way about hiring  
6 people and you felt another way about hiring people. Is  
7 that accurate?  
8 A. Yes.  
9 Q. Can you explain the difference in your feelings  
10 about hiring people?  
11 A. Just different recruiters we should use, the type  
12 of pedigree we should be hiring. So on. That's it.  
13 Q. What type of pedigree were you interested in  
14 hiring?  
15 A. I was interested in hiring people that were not as  
16 corporate that can understand the growth of an  
17 entrepreneurial type of environment?  
18 Q. What type of people is Mr. Aronson interested in  
19 hiring?  
20 A. Just much more corporate and white shoes and white  
21 gloves. Major, you know, household name type companies.  
22 Q. What was he hiring those companies for?  
23 MR. LINKE: Objection. Misstates testimony.  
24 BY MR. MCKINLEY:  
25 Q. I understood you to say that Mr. Aronson was

Page 8

1 interested in hiring white shoes and white glove companies.  
2 Is that not accurate?  
3 A. Individuals from white shoe, white glove  
4 companies.  
5 Q. I see. You were interested in hiring people from  
6 what kind of companies?  
7 A. More entrepreneurial earlier stage companies that  
8 had the ability to wear more hats than be tunnel-visioned in  
9 one type of job responsibility.  
10 Q. What were you hiring these individuals for?  
11 A. Again, anything from human resources to back room  
12 melt to people that weighed and analyzed gold contents to  
13 marketing to cleaning the facility.  
14 Q. Can you walk me through Green Bullion's corporate  
15 ownership structure during the time you were there?  
16 A. Well, first started out as 80/20 relationship  
17 between Jeff and I.  
18 Q. Who owned 80 and who owned 20?  
19 A. Jeff Aronson owned 80, Howard Mofshin owned 20.  
20 Q. It was a stand-alone entity that was owned solely  
21 by you and Jeff?  
22 A. Correct. Then.  
23 Q. What time period was that?  
24 A. '07 when I started.  
25 Q. Did that change?

<p style="text-align: right;">Page 9</p> <p>1 A. Yes.</p> <p>2 Q. When?</p> <p>3 A. I believe it was the end of '07 or beginning of</p> <p>4 '08.</p> <p>5 Q. What changed?</p> <p>6 A. General Catalyst and Highland Capital, two private</p> <p>7 equity companies bought into the company.</p> <p>8 Q. How did that change the structure?</p> <p>9 A. They bought 20 percent of the company equal pro</p> <p>10 rata from both Jeff and I.</p> <p>11 Q. Was there a proposed change in the future?</p> <p>12 A. Yes, Mangrove Capital out of Luxembourg bought, I</p> <p>13 don't remember what they bought. Seven percent, 15 percent.</p> <p>14 I think it was six, seven percent pro rata from Jeff and I.</p> <p>15 Q. When was that?</p> <p>16 A. That was summer of '09, I believe.</p> <p>17 Q. Tell me about your commercial e-mail marketing</p> <p>18 practices? Were you responsible for commercial e-mail</p> <p>19 practices at Green Bullion?</p> <p>20 A. No.</p> <p>21 Q. Who was responsible?</p> <p>22 A. The networks that we used.</p> <p>23 Q. Who was responsible for hiring those networks?</p> <p>24 A. Marketing department.</p> <p>25 Q. Who was responsible for the marketing department?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Within the last couple of weeks, I think. I'm not</p> <p>2 sure. Within the last couple of weeks.</p> <p>3 Q. Do you know why he left?</p> <p>4 A. Take a better opportunity I think salary wise.</p> <p>5 Q. I see. Were you in charge of any of the policies</p> <p>6 or procedures that Scott Kaufman used when choosing to hire</p> <p>7 which company to do your commercial e-mail marketing?</p> <p>8 A. Not directly. I mean, I was in charge of</p> <p>9 everything but not directly that.</p> <p>10 Q. What were the policies and procedures that were to</p> <p>11 be used?</p> <p>12 A. Basically that we had to use e-mail marketing,</p> <p>13 banner advertising. That the companies that got leads for</p> <p>14 us only were to get leads through e-mail marketing, banner</p> <p>15 advertising or paid search and that they should have about</p> <p>16 35 percent ratio of people that order those leads convert to</p> <p>17 packaging coming into the door.</p> <p>18 Q. Was there any requirement that those companies</p> <p>19 that did commercial electronic mail marketing for you comply</p> <p>20 with any laws or statutes?</p> <p>21 A. Anyone we hired was supposed to have their own</p> <p>22 in-house technology to comply with any laws that should have</p> <p>23 been complied with due e-mail marketing and as such from the</p> <p>24 other marketing that we did.</p> <p>25 Q. What did you do to determine whether or not they</p>
<p style="text-align: right;">Page 10</p> <p>1 A. David Knight.</p> <p>2 Q. Did you have anything to do with hiring the firms</p> <p>3 who did your electronic mail marketing?</p> <p>4 A. I signed off on it as president.</p> <p>5 Q. Did you have anything to do with choosing who was</p> <p>6 hired to do it?</p> <p>7 A. Sorry, I am not understanding your question.</p> <p>8 Q. Who was hired to do your commercial electronic</p> <p>9 mail marketing?</p> <p>10 A. David Knight. Excuse me, it was Scott Kaufman.</p> <p>11 Q. Who did Scott Kaufman hire to do it on your</p> <p>12 behalf?</p> <p>13 A. You mean the companies?</p> <p>14 Q. Yes.</p> <p>15 A. Hydra Media, Frontline, Q Interactive. I don't</p> <p>16 remember the other ones.</p> <p>17 Q. Whose decision was it to hire those companies?</p> <p>18 A. Scott Kaufman.</p> <p>19 Q. Did Scott Kaufman have the authority to hire those</p> <p>20 companies on his own?</p> <p>21 A. He had the authority to get to the finish line.</p> <p>22 Then for me to sign off.</p> <p>23 Q. Is Scott Kaufman still with the company?</p> <p>24 A. No, he is not.</p> <p>25 Q. Do you know when he left?</p>	<p style="text-align: right;">Page 12</p> <p>1 had their in-house policies to do so?</p> <p>2 A. We asked other people in the industry and at trade</p> <p>3 shows.</p> <p>4 Q. Who did you ask?</p> <p>5 A. Other vendors that were in the industry.</p> <p>6 Q. What did you ask them specifically?</p> <p>7 A. Are these guys good guys. You know. It was more</p> <p>8 about producing leads and the fact that they would have the</p> <p>9 ability to make sure that the leads that they gave to us</p> <p>10 were quality leads both on conversion and on compliance with</p> <p>11 the law.</p> <p>12 Q. I am confused. Were you concerned about whether</p> <p>13 or not they complied with the law?</p> <p>14 MR. LINKE: Objection. Ambiguous as to</p> <p>15 concerned.</p> <p>16 BY MR. MCKINLEY:</p> <p>17 Q. Do you understand what the word concerned means,</p> <p>18 Howard?</p> <p>19 A. Yes.</p> <p>20 Q. Were you concerned about whether or not the people</p> <p>21 you hired to send commercial e-mails for you complied with</p> <p>22 the law?</p> <p>23 A. Yes.</p> <p>24 Q. Did you do anything to look into their reputation</p> <p>25 for complying with the law before you hired them?</p>

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1 A. I thought I answered that by saying we asked other  
2 people in the industry if they were "good citizens of their  
3 space."  
4 Q. Did you undertake any investigation online?  
5 A. Yeah, we looked online to see if there were any  
6 issues. I don't recall what we saw. It must have been okay  
7 or we wouldn't have used them.  
8 Q. Would you have perhaps done a Google search on  
9 their name?  
10 A. You know what? I don't recall. Sorry, it was a  
11 long time ago.  
12 Q. Are you familiar with Spam House?  
13 A. No.  
14 Q. Are you familiar with the Roscoe list?  
15 A. No, the only Roscoe I remember was from Dukes of  
16 Hazard.  
17 Q. Are you familiar with any organization that tracks  
18 spammers?  
19 A. I mean, I know they are out there. I don't know  
20 their names.  
21 Q. Did you use any of those organizations as a  
22 research when you were conducting your due diligence to see  
23 if the people you were hiring to send commercial e-mails  
24 complied with the law?  
25 A. You know, Scott Kaufman could better answer that.

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1 I would assume he did.  
2 Q. Walk me through the process that took place at  
3 your company when one of the companies you hired to send  
4 commercial e-mails sent out an advertising campaign?  
5 A. We would have creative either done by our in-house  
6 creative department or by whichever house, for lack of a  
7 better word, was sending the e-mail out to their list of  
8 clients. I guess it was or affiliate. As long as the  
9 creative met our internal rules which were it couldn't say  
10 certain things or couldn't have any type of inference that  
11 we were the highest paid -- we paid the highest prices.  
12 Anything that wasn't exactly what our terms and conditions  
13 stated. Once that met all those objectives we would then  
14 send the creative or approve the creative that was sent to  
15 us from the house and they would then do what they do to get  
16 leads for us.  
17 Q. Did you ever review any of the e-mails that were  
18 sent out on your behalf?  
19 A. Yes.  
20 Q. Did you do that as a matter of course?  
21 A. No, I did it as a matter of, you know, spot  
22 checking.  
23 Q. How often would you check the e-mails?  
24 A. Once every couple weeks.  
25 Q. What would you look for when you checked the

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1 e-mails?  
2 A. Exactly what I just stated.  
3 Q. Would you look at the subject line on the e-mail?  
4 A. No.  
5 Q. Would you look at the front line on the e-mail?  
6 A. I would just look at the creative artistic  
7 verbiage on the actual e-mail when it was opened.  
8 Q. Could you answer my question? Did you look at the  
9 front line on the e-mail?  
10 A. No.  
11 Q. Did you look at any of the header information on  
12 the e-mail?  
13 A. No.  
14 Q. Did you inspect any of the information --  
15 A. -- that job was supposed to be done by whoever the  
16 house was sending out the e-mail.  
17 Q. Did you ever receive any complaints from anyone  
18 about the e-mails that were sent on your behalf?  
19 A. Yes.  
20 Q. How often did you receive those complaints?  
21 A. I don't recall how often but we did receive  
22 complaints.  
23 Q. What did you do as a result of those complaints?  
24 A. We sent it to Hydra, as an example, and said if  
25 this person is not interested in sending in a package please

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1 take them off the list.  
2 Q. Did anyone ever complain about compliance with the  
3 law when they complained about the e-mail?  
4 A. Not that I recall.  
5 Q. Did you ever review any of the e-mails as a result  
6 any of the complaint?  
7 A. Yes.  
8 Q. Did you ever review the headers of the e-mails as  
9 a result any of the complaints?  
10 A. Not that I recall.  
11 Q. Did you ever look into Hydra's practice as a  
12 result of any complaint?  
13 A. Yes.  
14 Q. What happened when you looked into their  
15 practices?  
16 A. We saw that they were not just sending e-mails and  
17 banner ads and paid search. That they were using  
18 pre-populated data and surveys and other non-contractual  
19 type of leads that we asked them to get us.  
20 Q. Did you consider that behavior unethical?  
21 A. Any time someone goes above and beyond a  
22 contractual agreement to me it's unethical.  
23 Q. What did you do as a result of that behavior?  
24 A. We notified them that we were not going to pay for  
25 these leads or any leads going forward until they changed



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1 their behavior and that the conversion rate on the e-mails  
2 matched with the general rule of thumb was that about 35  
3 percent of all e-mails should convert into packages.  
4 Q. Did the fact they were behaving in a manner that  
5 was unethical cause you any concern about whether they were  
6 complying with the law in other regards?  
7 A. It wasn't what I was thinking about.  
8 Q. So, the fact that they were behaving in a manner  
9 you thought was unethical didn't cause you any concern about  
10 whether or not they were complying with other laws?  
11 A. It caused me concern but they had always assured  
12 us that they were always compliant with the laws required  
13 for e-mailing any of the other types of marketing they were  
14 doing for us.  
15 Q. Had they also assured you they were not using  
16 surveying and other techniques you described as unethical?  
17 A. Yes, that is why we told them we were no longer  
18 interested in doing business with them at the end of the  
19 December '08 and have not paid them ever since then for the  
20 months after they did it for us because we told them we  
21 didn't want to do business with them.  
22 Q. When did you first learn of that behavior on your  
23 part?  
24 MR. LINKE: Objection. Vague as to this  
25 behavior.

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1 BY MR. MCKINLEY:  
2 Q. When did you first learn of what you considered to  
3 be unethical behavior on their part?  
4 A. Toward the end of December of '08.  
5 Q. Can I have GB009993 marked as plaintiff's one?  
6 Howard, are you looking at what's been marked as plaintiff's  
7 number one?  
8 A. Yes.  
9 Q. Can you tell me what it is?  
10 A. It looks like an e-mail that I -- hold on. Looks  
11 like something I must have sent to Chris Pink saying that  
12 they should not be sending this lady an e-mail anymore.  
13 (Plaintiff's Exhibit No. 1 was marked for  
14 identification.)  
15 BY MR. MCKINLEY:  
16 Q. What's the date on that e-mail?  
17 A. The date is February '09.  
18 Q. So, my understanding is you believed these guys at  
19 Hydra were acting in a way that was unethical in December of  
20 '08.  
21 Were you still doing business with them when this  
22 was sent?  
23 A. No, what happened was we stopped paying them.  
24 They agreed to send e-mails for free if we -- if their  
25 conversion went back into line then we pay them. If not, we

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1 wouldn't pay them for anything. They were just sending out  
2 free stuff for us.  
3 Q. How long did they send out free stuff for you?  
4 A. From January or February '09 until we stopped  
5 completely which was in April.  
6 Q. For a period of four months they were sending  
7 commercial electronic mail on your behalf for no  
8 compensation?  
9 A. No, that is two months from February to April.  
10 Q. Did they send commercial e-mail between December  
11 '08 --  
12 A. -- and February '09.  
13 Q. From the period beginning December '08 until the  
14 end of February '09 did Hydra continue to send commercial  
15 electronic e-mail messages on your behalf?  
16 A. We told them we were unhappy and that we did not  
17 want to pay for the stuff at some time the end of December,  
18 end of January. I don't recall the exact date. Then for a  
19 period of a couple months after that they tried to do tests  
20 to make sure that it met the conversion rate and they were  
21 not fraudulent bad data leads.  
22 Q. I am just asking for a yes or no?  
23 A. No.  
24 Q. From the period December '08 until the end of  
25 February '09, the date of that e-mail, did they send

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1 e-mails, commercial electronic mail messages on behalf of  
2 Green Bullion?  
3 Did Hydra send those?  
4 A. On behalf means to me that we were in contract to  
5 pay them for those. So, I would say no. If you asked if  
6 they sent them, yes.  
7 Q. Did they invoice you for e-mails sent during that  
8 period?  
9 A. Yes.  
10 Q. Mark exhibit two. Howard, take a minute to review  
11 what looks to be an e-mail chain there.  
12 A. Got it.  
13 Q. Howard, can you tell me what you're looking at?  
14 A. I am looking at -- looks like we caught Hydra  
15 sending out some type of blast e-mail to people that were  
16 not requesting it. So, what we call these is pre-populated  
17 data e-mails where it looks like it was sent as e-mail but  
18 it actually was never sent as e-mail. Then they sent us  
19 confirmation saying the person requested the data but it was  
20 just someone's data already populated into a lead which was  
21 pre-populated data.  
22 (Plaintiff's Exhibit No. 2 was marked for  
23 identification.)  
24 BY MR. MCKINLEY:  
25 Q. There is a line in the e-mail that says it was

<p style="text-align: right;">Page 21</p> <p>1 sent from michael@utown.com to Marion Aronson --</p> <p>2 A. -- yes.</p> <p>3 Q. Let me finish. It says Tim, it appears some sort</p> <p>4 of web bot or affiliate from Hydra is spamming our request</p> <p>5 kit forms.</p> <p>6 Do you know what that means?</p> <p>7 A. A web bot would be pre-populated data. I guess</p> <p>8 spamming would just be sending it out in a blast version.</p> <p>9 Q. Can you review exhibit three for me, Howard?</p> <p>10 A. I got it.</p> <p>11 Q. Can you describe what is marked as exhibit three?</p> <p>12 A. My partner is saying these guys keep giving us</p> <p>13 non-converting leads and that if they are going to continue</p> <p>14 to do this. We are going to continue to not pay them and we</p> <p>15 are going to look for new vendors.</p> <p>16 (Plaintiff's Exhibit No. 3 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. MCKINLEY:</p> <p>19 Q. Where does it say he is not going to pay them?</p> <p>20 A. I just know what he is saying here. It says this</p> <p>21 is really bad and in no way will you be responsible for any</p> <p>22 leads from the publisher. I will I you a report of bad</p> <p>23 leads and they will be credited to your account. To me that</p> <p>24 means he is not going to pay for them.</p> <p>25 Q. My understanding is that message is from Chris</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Because you think Jeff and I sat around all day</p> <p>2 looking at e-mail or we had people doing it for us?</p> <p>3 Q. Did she have authority to speak for your company</p> <p>4 or not.</p> <p>5 A. Yes.</p> <p>6 Q. Again, she seems to be consenting to them sending</p> <p>7 e-mail as long as they do so in a way that is compliant.</p> <p>8 Do you think that is a fair reading of her e-mail</p> <p>9 message there?</p> <p>10 A. Yes.</p> <p>11 Q. Take a look at plaintiff's four, Howard.</p> <p>12 A. I got it.</p> <p>13 Q. Can you tell me what is -- describe what's marked</p> <p>14 as plaintiff's exhibit number four?</p> <p>15 A. It looks like Chris Pink is saying to us Michael</p> <p>16 is doing this well enough. Then I had sent something to him</p> <p>17 saying this needs to get removed from the e-mail list ASAP.</p> <p>18 Then Pete from Yahoo is saying it doesn't sound like that is</p> <p>19 happening and that someone is blowing smoke up his ass.</p> <p>20 (Plaintiff's Exhibit No. 4 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. MCKINLEY:</p> <p>23 Q. What's the date on Pete's e-mail?</p> <p>24 A. January 1, '09.</p> <p>25 Q. How quickly would you try and get someone</p>
<p style="text-align: right;">Page 22</p> <p>1 Pink?</p> <p>2 A. That is. So, but there must have been another</p> <p>3 e-mail or Chris Pink must know he's giving us fraudulent</p> <p>4 leads and we are not going to pay for them.</p> <p>5 Q. Were you paying for non-fraudulent leads at that</p> <p>6 time?</p> <p>7 A. No, we were not paying for any leads at that time</p> <p>8 but we were in a dispute with them if we were going to. We</p> <p>9 were saying we were not going to and they were saying that</p> <p>10 we were going to pay for the past monies. We had not come</p> <p>11 to a conclusion. Our conclusion was we were not paying</p> <p>12 them. Their conclusion was they thought they were going to</p> <p>13 work something out with us.</p> <p>14 Q. Can you read the message below that from Jeanette</p> <p>15 to Chris?</p> <p>16 A. Yeah.</p> <p>17 Q. She says Hydra needs to control their publisher.</p> <p>18 It sounds to me like she is consenting to the e-mail that is</p> <p>19 being sent out and she just wants them to do a better job of</p> <p>20 it.</p> <p>21 Is that accurate?</p> <p>22 A. She was a lower level individual in marketing and</p> <p>23 had no idea of the monetary commitments or understanding</p> <p>24 between the executive level and Hydra or anyone else.</p> <p>25 Q. Why was she communicating with Chris?</p>	<p style="text-align: right;">Page 24</p> <p>1 un-subscribed from your list?</p> <p>2 A. ASAP.</p> <p>3 Q. How long did it take in this case?</p> <p>4 A. It looks like it took a month. You know what?</p> <p>5 The problem is that other people could be e-mailing the same</p> <p>6 guy our offer.</p> <p>7 Q. How would that work?</p> <p>8 A. Well, let's say Hydra had 50 affiliates e-mailing</p> <p>9 our offer. They could be e-mailing the same guy.</p> <p>10 Q. What would happen if he un-subscribed from one of</p> <p>11 those affiliates?</p> <p>12 MR. LINKE: Objection. Calls for speculation.</p> <p>13 BY MR. MCKINLEY:</p> <p>14 Q. You can answer the question, Howard, if you</p> <p>15 understand it?</p> <p>16 A. I don't understand it.</p> <p>17 MR. MCKINLEY: Well, can we read back the prior</p> <p>18 answer?</p> <p>19 (A portion of the record was read by the</p> <p>20 reporter.)</p> <p>21 BY MR. MCKINLEY:</p> <p>22 Q. Howard, could you explain to us what you mean by</p> <p>23 the problem in that prior answer?</p> <p>24 A. The problem is if a guy got an e-mail that had he</p> <p>25 shouldn't have gotten that doesn't make me happy.</p>



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1 Q. What did you mean by the other affiliates though?  
2 A. From what I understand, let's say Hydra is the  
3 company that we are contracted with. That they have other  
4 people that are contracted with them that e-mails someone's  
5 offer out. So, if they have a number of people e-mailing  
6 our offer I am guessing that one person's name could be on  
7 several lists.  
8 Q. Why would that matter?  
9 A. Because then you would be getting e-mail --  
10 getting e-mail that he asked not to get a couple weeks later  
11 from a different affiliate that is on mailing the list.  
12 Q. Why wouldn't there be a coordinated effort to  
13 remove him from everyone's list?  
14 A. I don't know.  
15 MR. LINKE: Objection. Calls for speculation.  
16 Calls for information beyond the knowledge.  
17 BY MR. MCKINLEY:  
18 Q. Do you have an answer, Howard?  
19 A. You need to ask Hydra that. Hydra was responsible  
20 for making sure that stuff was smooth.  
21 Q. Who is Scott Kaufman?  
22 A. He is a 40 year old gentleman that worked for Cash  
23 for Gold. Weighs about 250 pounds. Balding blonde hair.  
24 Q. What did he do for Cash for Gold?  
25 A. He was our head of e-mail marketing.

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1 Q. Can we mark five?  
2 MR. LINKE: Can we go off the record to discuss  
3 something related to your recent line of questioning?  
4 It might clarify things a little bit.  
5 MR. MCKINLEY: Sure.  
6 (Discussion was held off the record.)  
7 BY MR. MCKINLEY:  
8 Q. Howard, have you reviewed plaintiff's five?  
9 A. No, I haven't got it.  
10 Q. Can you describe what's marked as plaintiff's  
11 five?  
12 A. Just Scott Kaufman letting some of the people in  
13 marketing know about the different e-mail vendors or houses,  
14 what their strengths and weaknesses are.  
15 (Plaintiff's Exhibit No. 5 was marked for  
16 identification.)  
17 BY MR. MCKINLEY:  
18 Q. Can I draw your attention to the one called Encore  
19 Ads?  
20 A. I got it.  
21 Q. Can you read that for me?  
22 A. Their ex-Hydra guys seem to know the ins and outs  
23 of the industry including the tricks and know there are some  
24 shadiness at Hydra. They focus on getting Hot Mail and  
25 Yahoo e-mailed into the in box and have four partners that

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1 they work with who are experts and one is an AOL expert.  
2 There have 15 million live active e-mail addresses between  
3 the data they own and the lists they manage. All e-mails  
4 are opt in and have no complaints. Recommends that we use  
5 strict sub ID policies and that we don't use Click Booth.  
6 These guys seem sketchy but they may be able to produce but  
7 we have to watch them like a hawk.  
8 Q. Did you hire Encore Ads?  
9 A. I don't know.  
10 Q. Do you know what he meant by the shadiness at  
11 Hydra?  
12 A. Yeah, meaning that they tell you they are going to  
13 get you quality leads but that should convert at 35 percent  
14 but they converted five, six percent.  
15 Q. What was the date on this e-mail?  
16 A. Hold on. September 22, '09.  
17 Q. Did you do anything in September of '09 as a  
18 result of his report that Hydra was shady?  
19 A. Yes, I stopped paying them in December '08.  
20 Q. Did you pay them in September?  
21 A. I don't recall.  
22 Q. Did you pay them in October?  
23 A. This is '09; right?  
24 Q. Yes. Did you pay them September '09?  
25 A. No.

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1 Q. Did you pay them in October '09?  
2 A. No.  
3 Q. Did you pay them in November '09?  
4 A. No.  
5 Q. Skip ahead to plaintiff's six. Can you tell me  
6 what this is?  
7 A. It's a customer balance detail.  
8 (Plaintiff's Exhibit No. 6 was marked for  
9 identification.)  
10 BY MR. MCKINLEY:  
11 Q. Do you know what customer it's for?  
12 A. Hydra.  
13 Q. What does this document show me?  
14 A. It shows me that we stopped paying them in '08.  
15 Q. Does it show payments throughout '08?  
16 A. Yes.  
17 Q. Looks to me like you were paying these guys a lot  
18 of money. Do you agree?  
19 A. Yes.  
20 Q. So, for example, it starts on September '07  
21 invoiced you for \$13,320 and you paid that 15 days later.  
22 Is that accurate?  
23 A. That is accurate.  
24 Q. Next invoice is for \$44,000 and you paid that?  
25 A. Yes.

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1 Q. They were generating a lot of revenue for you  
2 during that time period, I take it. Is that true?  
3 A. Yes.  
4 Q. You were paying them quite a bit of money for  
5 generating that revenue. Is that true?  
6 A. Yes.  
7 MR. MCKINLEY: Let's take 15 minutes.  
8 (Brief recess was taken.)  
9 BY MR. MCKINLEY:  
10 Q. Circle back around. When did you first figure out  
11 that Hydra was acting in a way you considered unethical?  
12 A. I would say some time in December '08.  
13 Q. For how long after December '08 did Hydra continue  
14 to generate leads for Green Bullion?  
15 A. About four, five months.  
16 Q. When they generated good leads did you continue to  
17 convert that into a transaction?  
18 A. Yes, I believe so.  
19 Q. So, for a period of about four months they were  
20 sending out commercial e-mails. This would be January '09  
21 to April '09.  
22 For a period about four months you had decided  
23 their business practices were unethical because they had  
24 sent spam or whatever?  
25 MR. LINKE: Objection.

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1 THE WITNESS: No, no, no.  
2 MR. LINKE: Mischaracterization of the witness's  
3 testimony.  
4 THE WITNESS: That is not why I thought they were  
5 unethical.  
6 BY MR. MCKINLEY:  
7 Q. Why did you think they were unethical?  
8 A. Because their conversion rates went from 35  
9 percent to five, six percent.  
10 Q. Why did they go from 35 to five, six percent?  
11 A. I don't know. That is why I thought they were  
12 unethical.  
13 Q. I also want to circle back about their sending  
14 commercial e-mails. Is there someone at Green Bullion today  
15 who has knowledge of Green Bullion's commercial electronic  
16 e-mail practices and procedures other than you, Howard?  
17 MR. LINKE: Objection. Vague. Time period?  
18 BY MR. MCKINLEY:  
19 Q. During the time period that you worked there.  
20 Rephrase the question. During the time period that you  
21 worked for Green Bullion was there anyone at the company who  
22 had a better understanding of e-mail practices? Repeat my  
23 question, then you can answer.  
24 During the period that you worked at Green Bullion  
25 was there anyone at the company with a better understanding

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1 of your commercial e-mail practices and procedures than you?  
2 A. Shawn Kernes.  
3 Q. Spell that for me?  
4 A. S-H-A-W-N, K-E-R-N-E-S.  
5 Q. Does Shawn Kernes continue to work for Green  
6 Bullion? Do you know?  
7 A. Yes.  
8 Q. He still works for Green Bullion?  
9 A. Yes.  
10 Q. Do you know if Shawn Kernes reviews the e-mails  
11 that are sent on Green Bullion's behalf?  
12 A. I don't know.  
13 Q. Do you know if Shawn Kernes reviews the header  
14 information in the e-mails that are sent on Green Bullion's  
15 behalf?  
16 A. I don't know.  
17 Q. Do you know if Shawn Kernes did any background  
18 checks on any of your affiliates?  
19 A. Not sure.  
20 Q. Who sent e-mails on your behalf?  
21 A. Not sure.  
22 Q. Do you know if Shawn has personal knowledge of  
23 whether any of the affiliates who sent commercial e-mails on  
24 Green Bullion's behalf comply with any statutes or laws?  
25 A. I would believe that he would because he is our

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1 chief technology officer and would make sure that anybody  
2 that does e-mailing for us is considered compliant in those  
3 aspects.  
4 Q. Does that mean he would know about their  
5 reputation or their actual practices?  
6 A. Not sure.  
7 Q. You're not sure if he would know about their  
8 reputation?  
9 A. Not sure of either question you asked me.  
10 MR. MCKINLEY: Can we go off the record?  
11 (Discussion was held off the record.)  
12 CROSS EXAMINATION  
13 BY MR. LINKE:  
14 Q. Mr. Mofshin, earlier you testified that Green  
15 Bullion had an employee named Scott Kaufman. Do you recall  
16 that?  
17 A. Yes, sir.  
18 Q. Were you involved in Mr. Kaufman's hiring while  
19 you were at Green Bullion?  
20 A. Yes.  
21 Q. Do you know approximately when Mr. Kaufman was  
22 hired?  
23 A. I don't recall but it was some time I believe in  
24 '09.  
25 Q. Can you give me your best guess as to whether is

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1 was early, mid --  
2 MR. MCKINLEY: -- objection. Calls for  
3 speculation.  
4 MR. LINKE: Asking for an estimate.  
5 MR. MCKINLEY: You're asking the witness to  
6 speculate. I object. Calls for speculation.  
7 MR. LINKE: He just testified he has personal  
8 knowledge as to when he was hired.  
9 MR. MCKINLEY: He testified he doesn't remember.  
10 You asked him to speculate. Objection. Calls for  
11 speculation.  
12 MR. LINKE: I am entitled to his answer on the  
13 record.  
14 THE WITNESS: I believe it was February '09.  
15 MR. LINKE: Thank you. I am done.  
16 REDIRECT EXAMINATION  
17 BY MR. MCKINLEY:  
18 Q. Howard, when did you found Green Bullion?  
19 A. Green Bullion was founded some time in late '08.  
20 Cash for Gold was founded earlier. I am not sure which one  
21 you're asking for.  
22 Q. Start with Cash for Gold. When did you found Cash  
23 for Gold?  
24 A. Cash for Gold was found in April or May '07.  
25 Q. At the start of the company who was in charge of

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1 e-mail marketing relationship?  
2 A. Jeff Aronson and myself.  
3 Q. At that time period -- during that time period  
4 were you the person most knowledgeable about your policies  
5 and procedures related to commercial e-mails?  
6 A. Yes.  
7 Q. How long did you remain the person most  
8 knowledgeable about those policies and procedures?  
9 A. First question is yes. Second question is for  
10 about four, five months.  
11 Q. Until what date?  
12 A. I don't recall.  
13 MR. MCKINLEY: Did we get the insertion order  
14 back and some other stuff copied? Go off the record.  
15 (Discussion was held off the record.)  
16 BY MR. MCKINLEY:  
17 Q. Mark the five page insertion order as plaintiff's  
18 seven. Howard, are you looking at what's been marked as  
19 plaintiff's seven?  
20 A. Yes.  
21 Q. Can you tell me what it is?  
22 A. Insertion order.  
23 (Plaintiff's Exhibit No. 7 was marked for  
24 identification.)  
25 BY MR. MCKINLEY:

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1 Q. Who are the parties to the insertion order?  
2 A. Myself and Chris Pink.  
3 Q. Actually, you and Chris Pink were the ones that  
4 signed it. The party would be your company.  
5 A. Okay. Yes. Cash for Gold LLC and Green Bullion.  
6 Q. Is Hydra a party to this insertion order?  
7 A. Yes.  
8 Q. What day was this insertion order signed?  
9 A. It looks like either 10 or 12-28-08. I think  
10 10-28-08.  
11 Q. At that time who was the person most knowledgeable  
12 about your company, about your e-mailing practices and  
13 procedures?  
14 A. Michael Sheronberg (phonetic.)  
15 Q. Do you know where Michael Sheronberg works now?  
16 A. No.  
17 Q. Do you know if he still works for Cash or Gold?  
18 A. He does not.  
19 MR. MCKINLEY: That's all I have.  
20 (Witness was excused.)  
21 (Deposition was concluded at 1:20 p.m.)  
22  
23  
24  
25

Page 36

1 CERTIFICATE  
2  
3  
4 STATE OF FLORIDA  
5 COUNTY OF PALM BEACH  
6  
7 I hereby certify that I have read the  
8 foregoing deposition by me, given, and that the  
9 statements contained herein are true and correct  
10 to the best of my knowledge and belief, with the  
11 exception of any corrections or notations made on the  
12 errata sheet, if one was executed.  
13  
14 Dated this 27th of May, 2010.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOWARD MOFSHIN

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ERRATA SHEET

1 IN RE: Isomedia v. Spectrum

2 DEPOSITION OF: HOWARD MOFSHIN

3 TAKEN: May 18, 2010

4

5

6 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

7 PAGE # LINE # CHANGE REASON

8

9

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17

18 Please forward the original signed errata sheet to

19 this office so that copies may be distributed to all

20 parties.

21 Under penalty of perjury, I declare that I have

22 read my deposition and that it true and correct subject

23 to any changes in form or substance entered here.

24 Date: \_\_\_\_\_

25 SIGNATURE OF DEPONENT: \_\_\_\_\_

Page 38

CERTIFICATE OF OATH

1

2

3

4 STATE OF FLORIDA

5 COUNTY OF PALM BEACH

6

7

8 I, the undersigned authority, certify that

9 HOWARD MOFSHIN personally appeared before me and was duly

10 sworn on the 18th of May, 2010.

11

12 Witness my hand and official seal this

13 27th of May, 2010.

14

15

16

17

18

19

20 DEBORAH LAWRENCE

21 Notary Public, State of Florida

22 My Commission Expires: 4/2/2012

23 My Commission No: DD768644

24

25

Page 39

CERTIFICATE

1

2 THE STATE OF FLORIDA

3 COUNTY OF PALM BEACH

4

5 I, DEBORAH LAWRENCE, Court Reporter and Notary

6 Public in and for the State of Florida at Large, do

7 hereby certify that I was authorized to and did report

8 said deposition in stenotype; and that the foregoing

9 pages are a true and correct transcription of my

10 shorthand notes of said deposition.

11 I further certify that said deposition was taken at

12 the time and place hereinabove set forth and that the

13 taking of said deposition was commenced and completed

14 as hereinabove set out.

15 I further certify that I am not an attorney or

16 counsel of any of the parties, nor am I a relative or

17 employee of any attorney or counsel of party connected

18 with the action, nor am I financially interested in the

19 action.

20 The foregoing certification of this transcript does

21 not apply to any reproduction of the same by any means

22 unless under the direct control and/or direction of the

23 certifying reporter.

24 DATED this 27th of May, 2010.

25

DEBORAH LAWRENCE, Court Reporter

Page 40

1 DATE: May 27, 2010

2

3 HOWARD MOFSHIN

4 C/o Cathy Lerman, Esq.

5 2800 Gateway Drive

6 Pompano Beach, FL 33069

7 IN RE: Isomedia v. Spectrum

8

9 Please take notice that on the 18th of May, 2010, you

10 gave your deposition in the above-referred matter. At

11 that time, you did not waive signature. It is now

12 necessary that you sign your deposition.

13 Please call our office at the below-listed number to

14 schedule an appointment between the hours of 9:00 a.m.

15 and 4:30 p.m. Monday through Friday.

16

17 If you do not read and sign the deposition within a

18 reasonable time, the original, which has already been

19 forwarded to the ordering attorney, may be filed with

20 the Clerk of the Court. If you wish to waive your

21 signature, sign your name in the blank at the bottom of

22 this page.

23

24 Very truly yours,

25

DEBORAH LAWRENCE

New Wave Depo LLC

I do hereby waive my signature:

\_\_\_\_\_

HOWARD MOFSHIN